IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.78 OF 2006

Mr. Prashant Khushe. ..Petitioner.
Vs.
The State of Maharashtra and anr. ..Respondents.

Mr.J.P.Shah for the Petitioner.
Mrs. G.P.Mulekar, APP. for the State.
Mr. P.V. Samant for the Respondent No.2.

CORAM : R.S. MOHITE,J.
DATED : 04/5/2006.

P.C.

1. By this petition, the petitioner impugns an order passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai in C.C.No.186/Misc/2005 on 8.12.2005 issuing an order under Section 14 of the Securitisation Act, 2002.

2. Before the Respondent No.2 filed an application under Section 14 of the said Act, admittedly they had issued notice under Section 13(2) of the said Act. Instead of filing representation or objection after receiving notice under Section-13(2), the petitioner who is a borrower of the bank choose to file Writ Petition in this court being Writ Petition (L) No.651 of 2005. On 18.3.2005, the Division Bench of this court disposed of that writ petition because on behalf of the

petitioners in the said petition which included the present petitioner, statement came to be made by the Advocate that he will file an appeal and they should not be dispossessed from the residential flat as they were ready to handover necessary documents handing over the formal possession of the premises concerned. In view of the statement, the petition was allowed to be withdrawn with liberty to file appropriate appeal. Inspite of the aforesaid statement, no appeal is filed till today. Consequently, the respondent No.2-bank initiated proceeding before the Magistrate for taking physical possession and ultimately the impugned order came to be passed by the Magistrate on that application under Section 14 of the said Act. Two contentions are raised before me. Firstly, it is contended that the order passed by the Magistrate Under Section 14 of the Act is exparte order and that before the order under Section 14 was passed it was incumbent upon the Magistrate to hear the present petitioner. In this regard, reliance is placed by the petitioner on the judgment of the Apex Court in the case of **Mardia Chemicals Ltd. and others Vs. Union of India and ors. reported in (2004) 4 Supreme Court Cases Page 311.** It is fairly conceded on behalf of the petitioner that Section 14 does not expressly provides for giving of notice. It is however, contended that the requirement of giving notice must be read into Section-14. Reliance is placed upon the

observations of the Apex Court in Paragraph-77 of Mardia Chemicals Ltd. and others (cited supra). These observations are to the effect that before taking any drastic action the secured creditor must give a reply to the representation. It is also fairly conceded that the said authority does not directly deal with the question of giving notice under Section-14 of the Act. In my view, the requirement of natural justice has been expressly provided under Section 13 of the Securitisation Act. Once the rule of natural justice is followed by the procedure under Section 13 of the Act, no further notice is required under Section 14 of the Act which is a prohibition in the statute to enforce the acts permitted under Section 13 of the Act which acts only be valid by following rules of natural justice. Therefore, there is no substance in the first contention raised on behalf of the petitioner. The second contention is raised that Section 14 only pertains to movable property. The logic behind this submission is that under Section 14 of the Act, Magistrate can take possession of such assets and documents relating to the property and forward such assets and documents to the secured creditor. It is sought to be contended that there is no question of forwarding immovable property to the secured creditor and therefore, the operation of Section-14 must be limited only to movable property. On plain reading of Section 14, it is clear that the

Magistrate has power to take possession of "unsecured assets" if it was the intention of the Magistrate to restrict this provision to movable property that could have been made clear by introducing such a limitation in Section 14(1) of the Act. It is true that immovable property cannot be forwarded to the secured creditor. In my view, in case the possession of immovable property is taken then it will be sufficient compliance of Section 14(1)(b) to forward the title deeds in respect of such immovable property to the secured creditor. In this connection, it must be borne in mind that Section 13 also empowers the secured creditor from taking possession of unsecured assets and there is no limitation that the said assets must only comprises of movable property. Security Interest (Enforcement) Rules, 2002 relates to the disposal of the property inter alia relates to the sale of immovable assets which have been secured. The scheme of the Act is therefore, very clear that secured creditor can take possession of unsecured assets whether movable or immovable.

3. Yet, another contention that third party had filed insolvency proceeding before the court of Civil Judge, S.D. Baroda and obtained an order of Status quo. It is contended that the act on the part of the respondent No.2 bank amounts to contempt. The copy of the said order is shown to me. The same is passed on 20.4.2005.

It is fairly contended that the bank is not party to the said insolvency proceeding and the bank also would not be a necessary party. The order passed in the said proceeding is not binding on the bank. Apart from this, if the bank obtains possession through the process of law inspite of resistance of the petitioner then obviously it would not amount to contempt on the part of the petitioner. In the circumstances, there is no substance in the petition. Accordingly, the petition is dismissed. However, Status quo will be maintained by the parties for a period of three weeks from today.

(R. S. MOHITE, J.)